

# SOUTHERN ENVIRONMENTAL LAW CENTER

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May 14, 2019

***Submitted via FOIAonline***

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

**Re: FOIA Request: EPA Interpretive Statement on Discharges of Pollution Via  
Groundwater Hydrologic Connection**

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, the Southern Environmental Law Center ("SELC") respectfully submits the following records request:

On February 20, 2018, EPA issued a request for public comments on the application of Clean Water Act permitting requirements to discharges of pollutants via groundwater. 83 Fed. Reg. 7126, 7128 (Feb. 20, 2018) ("the Request for Public Comment"). EPA announced an Interpretive Statement regarding this issue on April 15, 2019, and published it in the Federal Register at 84 Fed. Reg. 16810 (April 23, 2019) ("the Interpretive Statement").

We request all records created or received from February 20, 2017 until the time you fulfill this request (including but not limited to all emails, text messages, Slack messages, phone logs, and calendar appointments) regarding any communications relating to the Request for Public Comment and/or the Interpretive Statement between EPA employees and any employee or agent of:

- Duke Energy
- Tennessee Valley Authority
- Dominion Energy
- The County of Maui
- Kinder Morgan
- The Utility Water Act Group
- The Utility Solid Waste Activities Group
- The Edison Electric Institute
- The Electric Power Research Institute
- Any law firm representing or acting on behalf of any of these entities.

For the purposes of this request, the term "records" includes all written, printed, recorded, or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession,

custody, or control of EPA. Please provide any electronic records in native file format. Please also include all responsive records generated up to the date this request is filled.

The disclosure of the requested materials would be in the public interest because it is likely to contribute significantly to public understanding of the Interpretive Statement and EPA's ongoing activities in relation to the scope of the Clean Water Act, which could have profound impacts on the work of EPA and its mission to protect human health and the environment, and is not in the commercial interest of SELC. SELC is a 501(c)(3) non-profit organization working to protect the natural resources of the Southeast and, in particular, to gather, analyze, and disseminate public information about activities affecting human health and the environment in the Southeast. As part of its work, SELC has been actively engaged in protecting the environment of the Southeast for three decades. SELC intends to disseminate the information gathered through this request to the general public through its website, [southernenvironment.org](http://southernenvironment.org), which is updated regularly, press releases, social media, and public comment letters.

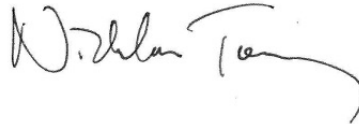
We request that you waive any search and duplication fees and provide the requested records without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). EPA has granted SELC fee waivers for prior FOIA requests. A fee waiver is appropriate because SELC does not have a commercial interest that would be furthered by the requested disclosure. SELC is a 501(c)(3) non-profit organization that provides legal representation to other 501(c)(3) non-profits and public advocacy free of charge. Our intended use of the requested materials is to glean a greater understanding of the Interpretive Statement and EPA's ongoing activities related to the scope of the Clean Water Act, and to continue to disseminate information about federal environmental policy to the public through the many channels described above. All of the activities described above have been, and will continue to be, provided to the public by SELC and our clients for no payment. Courts have recognized that Congress intended FOIA's fee waiver to be "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987).

Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we request that you contact us before processing this request to discuss fees. We reserve our right to appeal a denial of our request for a fee waiver or reduction.

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FOIA directs a responding agency to make a "determination" on any request within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A). Should our request be denied, we ask that you inform us of the grounds for denial and the specific administrative appeal rights that are available. Please contact me at (919) 967-1450 or [ntorrey@selcnc.org](mailto:ntorrey@selcnc.org) to arrange for inspection, copying, and electronic transmission of the requested documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas Torrey", with a long, sweeping horizontal stroke extending to the right.

Nicholas S. Torrey  
Senior Attorney